

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Tod's Auto Repair & Tire Services, Inc.
16468 US Highway 431 South
Headland, Alabama 36345
Henry County
Class One Receiver Permit #S0000025601

Order No. 10-XXX-ST

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Scrap Tire Environmental Quality Act, Ala. Code §§ 22-40A- 1 to 22-40A-24(2006 Rplc. Vol. and 2009 Cum Supp.), and the ADEM Administrative Code promulgated thereunder, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following findings of fact:

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Pursuant to Ala. Code § 22-40A-11(2006 Rplc. Vol. and 2009 Cum Supp.), the Department is the state agency authorized to administer and enforce the provisions of the Alabama Scrap Tire Environmental Quality Act, Ala. Code §§ 22-40A-1 to 22-40A-24(2006 Rplc. Vol. and 2009 Cum Supp.).
3. On November 18, 2004, the Department issued a Class One Receiver registration, No. S0000025601, to Tod's Auto Repair & Tire Service, Inc. (hereinafter "the Registrant") for a facility located at 16468 US Highway 431 South, Headland, in Henry County, Alabama.
4. On March 18, 2009, Department personnel conducted an inspection of the Registrant's facility to determine compliance with Division 4 of the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin Code r. 335-4-5-.01(2) states that no receiver may expose scrap tires to the elements for more than thirty (30) days. At the time of inspection, Department personnel documented that the Registrant had exposed scrap tires to the elements for more than thirty (30) days.

b. ADEM Admin Code r. 335-4-5-.03 requires that a receiver shall submit a summary of the previous quarter activities to ADEM utilizing ADEM Form 539. Item F in the Registrant's registration authorization requires that reports are to be submitted not later than the 28th day of the next month after the end of the reporting period. Department personnel documented that the reports had not been submitted in a timely manner in accordance with the Registrant's registration authorization.

c. ADEM Admin Code r. 335-4-5-.04 requires that the Registrant maintain an operating record at the facility or in an alternate location approved by ADEM, and that the operating record must contain copies of quarterly reports, registration authorization, etc. At the time of inspection, Department personnel documented that the Registrant had failed to maintain copies of all quarterly reports and the registration authorization in the operating record.

5. On April 7, 2009, the Department issued a Notice of Violation (hereinafter "NOV") to the Registrant for the violations documented during the March 18, 2009, inspection.

6. On May 19, 2009, The Department received a response to the April 7, 2009, NOV.

c. On January 25, 2010, Department personnel conducted an inspection of the Registrant's facility to determine compliance with Division 4 of the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin Code r. 335-4-5-.01(2) states that no receiver may expose scrap tires to the elements for more than thirty (30) days. At the time of inspection, Department personnel documented that the Registrant had exposed scrap tires to the elements for more than thirty (30) days.

b. ADEM Admin Code r. 335-4-5-.03 requires that a receiver shall submit a summary of the previous quarter activities to ADEM utilizing ADEM Form 539. Item F in the Registrant's registration authorization requires that reports are to be submitted not later than the 28th day of the next month after the end of the reporting period. Department personnel documented that the reports had not been submitted in a timely manner in accordance with the Registrant's registration authorization.

c. ADEM Admin Code r. 335-4-5-.04 requires that the Registrant maintains an operating record at the facility or in an alternate location approved by ADEM, and that the operating record must contain copies of quarterly reports, registration authorization, etc. At the time of inspection, Department personnel documented that the Registrant had failed to maintain copies of all quarterly reports and the registration authorization in the operating record.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Registrant; the economic benefit which delayed compliance may confer upon the Registrant; the nature, extent and degree of success of the Registrant's efforts to minimize or mitigate the effects of such violation upon the environment; the Registrant's history of previous violations; and the ability of the Registrant to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Registrant did not comply with provisions of ADEM Admin. Code div. 335-4. The Department has no evidence of any irreparable harm to the environment. Exposing tires to the elements for longer than 30 days may pose a threat to human health and to the safety of the public as a result of the potential presence of disease vectors.

B. THE STANDARD OF CARE: The Registrant failed to operate in a manner commensurate with applicable scrap tire regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if the Registrant has realized a significant economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts employed by the Registrant to mitigate any effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Registrant has a history of similar violations.

F. THE ABILITY TO PAY: The Registrant has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$3,200.00 is appropriate given the repeat actions of the violator, and in keeping with a penalty range imposed by the Department for similar violations at other facilities, as follows (see attachment A):

Violation Type

Penalty Range for Violation Type

Scrap Tire Facility Operation Requirements

\$100 - \$25,000

ORDER

Based on the foregoing findings of facts and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-40A-11, and 22-40A-19 it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, the Registrant shall pay to the Department a civil penalty in the amount of Three Thousand two hundred dollars (\$3,200.00) for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified check or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference the Registrant's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance date of this Order and continuing each and every day thereafter, the Registrant shall comply with all applicable provisions of ADEM Admin. Code div. 335-4.

C. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Registrant for the violations cited herein.

D. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against the Registrant for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2010.

Lance R. LeFleur

Director

Attachment A

Penalty Calculation Worksheet

Tod's Auto Repair & Tire Service, Inc.

(Scrap Tire Registration No. S0000025601)

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Tires exposed longer than 30 days	2	1000	100	500
Quarterly reports not submitted by 28 th of month	2	500	100	200
Failure to maintain complete operating record	2	500	50	250
Totals:	-	2000	250	950
Economic Benefit:	-			
Mitigating Factors:	-			
Ability to Pay:	-			
Other Factors:	-			
Civil Penalty:				\$3200

Footnotes

* See the "Findings" of the order.